

IN THE COURT OF APPEAL CRIMINAL DIVISION

Appeal No: 202202221 B2 / 202303800 B2

B E T W E E N:

REX

v

ADEMOLA ADEDEJI

**THIRD PARTY INTERVENTION SUBMISSIONS
ON BEHALF OF JUSTICE**

1. SUMMARY

- 1.1 JUSTICE is a cross-party law reform and human rights charity aiming to create a fairer UK justice system for all and is the UK section of the International Commission of Jurists. JUSTICE has conducted substantial research on racial disproportionality in the criminal justice system. In 2021, it published "*Tackling Racial Injustice: Children and the Youth Justice System*" (the "**Tackling Racial Injustice JUSTICE Report**"), a focus of which was the role of gang affiliation and drill music evidence in prosecuting Black defendants.¹ JUSTICE has also contributed to panels on these issues, including as a consultee on the development of prospective Crown Prosecution Service ("**CPS**") guidance on the use of drill music as evidence, and is part of the Disproportionality Advisory Group set up by the CPS in 2023.
- 1.2 Mr Adedeji ("**the Appellant**") was convicted in May 2022 of conspiring to cause grievous bodily harm with intent, along with nine others. He has been granted leave to appeal his conviction and sentence, challenging the evidence used against him. This includes the presentation of a video purportedly identifying him as part of the M40 gang and an image of him holding cash to his ear, both used to suggest gang membership or affiliation, which he denies.
- 1.3 These submissions, made on behalf of JUSTICE, aim to assist the Court in respect of issues of public importance that arise in this appeal in relation to issues 2(d), (e) and (f) of the Order dated 31 July 2024. Namely issues of racial stereotyping and the

¹ JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System' (2021) <<https://justice.org.uk/our-work/criminal-justice-system/current-work-criminal-justice/tackling-racial-injustice/>>

adultification of Black and ethnic minority defendants and the misinterpretation of drill music as evidence of criminal activity.

1.4 JUSTICE submits in relation to issues **2(d), (e) and (f) of the Order dated 31 July 2024** that:

1.4.1 The Crown and the Court's approach to the Appellant's gang membership or affiliation risked reliance on racial stereotypes, which can introduce bias and lead to the 'adultification' of Black and ethnic minority children and young adults. This stereotyping can undermine trial fairness and result in unjust convictions (**issues 2(d) and (e) of the Order dated 31 July 2024**).

1.4.2 Given the evidence purporting to relate to gang membership presented by the prosecution, independent expert testimony should have been tendered to present provided a balanced assessment of the evidence. The fresh evidence provide by the Appellant shows that expert evidence would have provided clearer analysis of the complex issue of gang membership, and avoided the errors of fact the police witnesses fell into (**2(f) of the Order dated 31 July 2024**).

1.4.3 The unfairness experienced in the Appellant's case was compounded by the Crown's use of identification evidence based on a review of video evidence, which has been shown to be unreliable owing to cognitive biases (**2(f) of the Order dated 31 July 2024**).

2. PREJUDICIAL USE OF GANG AFFILIATION EVIDENCE

Dangers of Potential Racial Stereotyping

2.1 Alleged gang affiliation lay at the heart of the Appellant's conviction and sentence. This is a common issue in cases involving ethnic minority defendants, especially Black children and young adults.² This appeal highlights the problems associated with racial stereotyping and institutional racism, as seen in the wrongful identification made by PC McGregor from a brief video with drill music playing in the background, purportedly showing the Appellant wearing a 'blue bandana', and the prejudicial 'money phone' photograph, which was used to portray the Appellant as a member of the M40 gang.

² JUSTICE notes that it is preparing to intervene in *R v Goodall, Walters and Williams* in the CCRC.

- 2.2 The overrepresentation of Black children and young adults in cases with alleged 'gang' elements has been explored in state reports on 'institutional racism',³ and the Bar Council and CPS have acknowledged the impact of institutional racism on criminal justice outcomes.⁴ In January 2024, the National Police Chiefs' Council admitted to institutional racism within the police, leading to "*disproportionate outcomes*" for Black individuals.⁵ Reports from the National Police Chiefs' Council and the College of Policing confirm that "*racism, discrimination and bias*" exist in crime detection and prevention.⁶ Elizabeth Cameron, former chair of the Greater Manchester Race Equality Panel, stated in 2021 and 2023 that Greater Manchester Police, for example, remains "*institutionally racist*".⁷
- 2.3 Nisha Waller in '*The legal dragnet*' suggests that the use of gang narratives contributes to the construction of "*collective intent*" in criminal cases with the risks of this legal vagueness particularly Black children and young adults.⁸ This is compounded by the fact that the 'gang narrative', as highlighted in the '*Dangerous associations: Joint enterprise, gangs and racism*' (the "**Dangerous Associations Report**"), is predominantly used against non-white individuals, with "*the gang construct...racialised to Black and brown men.*" In Manchester, 89% on 'gang lists' were Black or ethnic minorities, yet 77% of serious youth violence cases were attributed to

³ See, for example Baroness Lola Young, 'The Young Review: Improving outcomes for young Black and/or Muslim men in the Criminal Justice System' (1 December 2014), 30-31 <https://www.prisonpolicy.org/scans/young_review/improving_outcomes.pdf>; David Lammy, 'The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System' (September 2017), 69 <<https://www.gov.uk/government/publications/lammy-review-final-report>>.

⁴ The Bar Council, 'Race at the Bar: A Snapshot Report' (November 2021) <<https://www.barcouncil.org.uk/static/d821c952-ec38-41b2-a41ebcea362b28e5/Race-at-the-Bar-Report-2021.pdf>>; Crown Prosecution Service, 'CPS sets out Action Plan to tackle disproportionality in charging decisions' (28 November 2024) <<https://www.cps.gov.uk/cps/news/cps-sets-out-action-plan-tackle-disproportionality-charging-decisions>>

⁵ Vikram Dodd, 'Head of Britain's police chiefs says force 'institutionally racist'' *The Guardian* (5 January 2024) <<https://www.theguardian.com/uk-news/2024/jan/05/head-of-britains-police-chiefs-says-force-is-institutionally-racist-gavin-stephens>>

⁶ National Police Chiefs' Council, 'Police Race Action Plan Improving policing for Black people' (College of Policing, 2022), 3 <<https://assets.college.police.uk/s3fs-public/Police-Race-Action-Plan.pdf>>

⁷ BBC News, 'Greater Manchester Police branded 'institutionally racist'' *BBC* (27 July 2021) <<https://www.bbc.co.uk/news/uk-england-manchester-57982273>>

⁸ Nisha Waller, 'The legal dragnet: Joint enterprise law and its implications' (Centre for Crime and Justice Studies, 2024),4 <<https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/The%20Legal%20Dragnet%2C%20Sep%202024.pdf>>

white individuals.⁹ Whilst this case involves a conspiracy, evidence on 'collective intent' joint enterprise ("JE") prosecutions is directly relevant in cases whereby gang allegations are central to making out the offence. For example, the CPS data shows Black people are prosecuted under JE sixteen times more than white people.¹⁰

- 2.4 Mislabelling Black children and young adults as 'gangs' not only leads to overrepresentation in JE prosecutions but also influences the prosecutions themselves. The 'gang' label can serve as a "*conviction-maximising tool*" which can serve to strengthen weak cases as such gang narratives are so embedded in public consciousness that drawing on them implicitly appeals to racial stereotypes about Black children and young adults.¹¹
- 2.5 This use of the gang label in JE cases involving Black children and young adults has been compared to "*throwing petrol*" on a law that is "*hazy and undefined*" to "*inflame it*".¹²

Dangers of Analysing Drill Music

- 2.6 The use of a video featuring drill music was crucial in the prosecution portraying the Appellant as a dangerous gang member. Research by JUSTICE shows that stereotypes about 'gangs' have led to elements of Black culture, like rap and drill music, being seen "*through the prism of gang activity*"¹³ which can play into racial stereotyping. This is of particular concern in the present appeal, where the Appellant's very depiction in the video is disputed.
- 2.7 Racial stereotyping and adultification (detailed further below) have contributed to a narrative that criminalises Black youth culture. The rise of rap music genres like grime, road rap, and drill in the UK has led the criminal justice system to increasingly view these genres as indicators of criminal behaviour or gang involvement.¹⁴ This connection

⁹ Patrick Williams and Becky Clarke, 'Dangerous associations: Joint enterprise, gangs and racism' (Centre for Crime and Justice Studies, 2016), 11 <<http://www.crimeandjustice.org.uk/publications/dangerous-associations-joint-enterprise-gangs-and-racism>>

¹⁰ Whilst making up just 4% of the population, Black people accounted for 30% of defendants in JE cases. By contrast, white people make up 82% of the population and accounted for 39% of JE defendants. See CPS 'Crown Prosecution Service Joint Enterprise pilot 2023: data Analysis' (29 September 2023) <<https://www.cps.gov.uk/publication/crown-prosecution-service-joint-enterprise-pilot-2023-data-analysis>>

¹¹ Nisha Waller (n.8), 18

¹² Ibid, 22

¹³ Tackling Racial Injustice JUSTICE Report (n.1), 33.

¹⁴ *R v Lewis and others* [2014] EWCA Crim 48; *R v Adebola Alimi* [2014] EWCA Crim 2412; *R v Solomon* [2019] EWCA Crim 1356.

between rap music and criminality is often misguided. Dr Abenaa Owusu Bempah notes that: "*While the appearance of authenticity is important within some rap subgenres, particularly drill, many rappers have no connection to criminal activity or grossly exaggerate their involvement. References to criminal acts are often fictional and entertaining...*"¹⁵

- 2.8 Young Black men engaging with or creating drill music is not an indicator of poor character unless it can be directly linked with actual criminality. However, the media has reinforced stereotypes, as seen in the 'ban drill' movement from 2017 to 2019, which even led to a parliamentary petition to ban the genre.¹⁶ Jonathan Ilan argues that being '*street literate*' is essential to properly understanding drill music, especially as evidence, because simply "*interpreting drill music as nothing more than incitement to violence or online 'gang' conflict street-illiterately substitutes stereotypes for deeper understanding.*"¹⁷ These stereotypes, often amplified by the media, can influence prosecutors and juries by reinforcing gang narratives.

Adultification

- 2.9 Judicial reliance on the Appellant's alleged gang membership or affiliation, and the evidence purporting to support it, is inextricably tied to racial stereotypes and bias which often lead to the adultification of individuals from ethnic minority backgrounds, especially Black individuals, compromising trial fairness. Within the criminal justice system, adultification is a form of racial bias that manifests in the perception and treatment of minority groups, and particularly Black children as being inherently less innocent, and more mature, threatening and culpable than their white peers.¹⁸

¹⁵ Abenaa Owusu-Bempah, 'The irrelevance of rap' (2022) 2 Crim. L.R. 130 <<https://endrapontrial.org/wp-content/uploads/2022/01/The-irrelevance-of-rap-Crim-LR.pdf>>

¹⁶ BBC News, 'Drill Music: Is it right to blame the genre for violence' (2018), <<https://www.youtube.com/watch?v=toupivpKpPM&t=32s>>; UK government and Parliament Petitions, 'Ban drill music for contributing to violence and stabbings' (12 June 2019) <<https://petition.parliament.uk/archived/petitions/264640>>

¹⁷ Jonathan Ilan, 'Digital Street Culture Decoded: Why Criminalizing Drill Music is Street Illiterate and Counterproductive' (2020) *The British Journal of Criminology*, 60(4), 994- 1013. <<https://academic.oup.com/bjc/article-abstract/60/4/994/5706791>>

¹⁸ Aamna Mohdin, 'They saw me as calculating, not a child': how adultification leads to Black children being treated as criminals' *The Guardian* (5 July 2022) <<https://www.theguardian.com/society/2022/jul/05/they-saw-me-as-calculating-not-a-child-how-adultification-leads-to-black-children-being-treated-as-criminals>>, NPCC Police Race Action Plan Progress Report – July 2024 <<https://www.npcc.police.uk/SysSiteAssets/media/downloads/our-work/race-action-plan/police-race-action-plan-progress-report.pdf>>, and Jahine Davis 'Adultification bias within child protection and safeguarding' (HM Inspectorate of Probation, June 2022) <<https://www.justiceinspectors.gov.uk/hmiprobation/wp->

- 2.10 Research has shown that Black boys are perceived as less 'childlike' than white boys, with perceptions of childhood innocence often not extended beyond age 13 for Black children, unlike white children who may be seen as not fully responsible into their late twenties.¹⁹ This contrasts with the Court of Appeal's recognition that adolescent brain development continues up to age 25 in the areas of "*emotional control, restraint, awareness of risk and the ability to appreciate the consequences of one's own and others' actions; in short, the processes of thought engaged in by, and the hallmark of, mature and responsible adults*".²⁰
- 2.11 The adultification and criminalisation of Black children is evident throughout the criminal justice system, from street-level policing²¹ to increased conviction²² and sentencing rates.²³ Ministry of Justice analysis found Black children in the UK are nine times more likely to be jailed than white peers and more often labelled as "*gang concerns*" or "*risks to others*" upon entering custody, despite similar vulnerabilities across ethnic groups.²⁴ This was found despite few statistical differences between Black

content/uploads/sites/5/2022/06/Academic-Insights-Adultification-bias-within-child-protection-and-safeguarding.pdf

¹⁹ Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta, Natalie Ann DiTomasso, 'The essence of innocence: consequences of dehumanizing Black children' (2014) <<https://pubmed.ncbi.nlm.nih.gov/24564373/>>; see also Jahnine Davis and Nicholas Marsh, 'Boys to men: the cost of 'adultification' in safeguarding responses to Black boys' (2020) 8(2) Critical and Radical Social Work 255-259

²⁰ *ZA v REX* [2023] EWCA Crim 596

²¹ See for example, Dame Rachel de Souza, 'Strip search of children in England and Wales – First complete dataset for 2018–2023, including new data July 2022–June 2023 (Children's Commissioner, August 2024) <<https://assets.childrenscommissioner.gov.uk/wpuploads/2024/08/Strip-searching-of-children-in-England-and-Wales-2024.pdf>>

²² See for example Youth Justice Board, 'Youth Justice Statistics: 2021 to 2022' (27 January 2023) <<https://www.gov.uk/government/statistics/youth-justice-statistics-2021-to-2022/youth-justice-statistics-2021-to-2022-accessible-version>>: while the percentage of white children cautioned or convicted for offending has steadily decreased from 83% to 71% between 2013 and 2022, for Black children that percentage has gradually risen from 8% to 12%. See also 'Youth Justice Statistics: 2022 to 2023' (25 January 2024) <<https://www.gov.uk/government/statistics/youth-justice-statistics-2022-to-2023/youth-justice-statistics-2022-to-2023-accessible-version>>: Black children remain over-represented in conviction figures, accounting for 11% of all children cautioned or sentenced compared with 6% of the 10-17 population.

²³ See for example, Youth Justice Board for England and Wales, 'Ethnic disproportionality in remand and sentencing in the youth justice system: Analysis of administrative data' (21 January 2021), 10. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf>: Even after all available factors are controlled for, Black children are least likely to receive an out-of-court disposal and are most likely to be remanded in custody or receive a custodial sentence. See also Youth Justice Statistics 2022-2023 (Ibid): While the proportion of white children remanded in youth custody has decreased from 52% in 2013 to 39% in 2023, for Black children this has increased from 29% to 33%.

²⁴ Ministry of Justice Analytical Services, 'Exploratory analysis of 10-17 year olds in the youth secure estate by Black and other minority ethnic groups' (Ministry of Justice, September 2017) <<https://assets.publishing.service.gov.uk/media/5a8223cbcd915d74e3401f0b/Exploratory-analysis-of-10-17-year-olds-in-the-youth-secure-estate-by-bame-groups.pdf>>

children and young people and other ethnic groups in areas of vulnerability which may typically be linked to higher conviction rates such as education attainment, looked after child status, free school meals, special educational needs, or persistent absence and exclusion from school.

2.12 JUSTICE submits that adultification occurred in the Appellant's case. He was 17 at the offence, 18 at conviction, and 19 at sentencing. The evidence advanced by the prosecution, including his contribution of 11 messages in a Telegram chat, and the money phone photo, can be deemed spontaneous and impulsive in nature. These are typical childlike and adolescent behaviours, but the jury were not directed or warned of the dangers of mischaracterising the behaviour as evidence of criminal intent by viewing the defendant as a more mature adult, and the jury should have been informed of the prevalence of such behaviour among children as well as the unconscious biases they may suffer seeing such actions committed by a Black teenager in order to weigh the evidence appropriately. This did not occur in the Appellant's case and therefore risked the introduction of unconscious bias amongst the jury when weighing the defendants' decision-making and actions.

2.13 Moreover, JUSTICE is concerned that adultification, combined with misunderstandings of youth culture and celebrity imitation (mistaken for 'gang culture'), has led to behaviour typical of childish fun being misinterpreted as gang affiliation.²⁵ In the Appellant's case:

2.13.1 The 'money phone' was wrongly accepted as a gang sign. However, holding up money to one's ear is a youth culture symbol popularised by famous and aspirational celebrity rappers such as 50 Cent and Mac Miller. The symbol brags about wealth or general success, and has no accepted link with drug dealing, gang membership or criminality. Despite these more mundane alternative readings, the prosecution asserted and it was thereafter accepted that the photo was evidence of affiliation with M40. This was compounded by the insinuation that the money phone was connected with drug dealing, despite no evidence that M40 was a street-gang involved in drug offences.

2.13.2 The police officers involved, who were not experts, also asserted that a young boy wearing a bandana indicated gang membership or affiliation, or criminal

²⁵ For example, see the prosecution cross-examination of the Appellant [AA evidence 38C / Y291].

intent, rather than simply acting playfully with friends.²⁶ This assertion relied on stereotypes and lacked evidentiary support and consideration of alternative cultural explanations.

2.13.3 Friendships with local boys, like John Soyoye, was used by the Prosecution to imply guilt by association, denying Black children their freedom of association and misinterpreting innocent friendships as suspicious, treating them as adults without proper guidance.

3. LACK OF APPROPRIATE EXPERTS

3.1 Moreover, the prosecution's case against the Appellant relied heavily on gang-related evidence, yet the prosecution did not call an independent gang expert, as required by the standards in *Myers v The Queen* [2015] UKPC 40. Rather, the police officers from the local unit presented witness evidence in the Appellant's case and were effectively treated for the purposes of the criminal trial to be 'experts' – there was no involvement from a specialist gangs unit or police gangs expert. This is significant because the prosecution admitted that gang evidence was "central" to their case, asserting that M40 was a gang in conflict with RTD, and that each defendant (including the Appellant) was linked to M40, with the prosecution case relying on the 'blue bandana' and 'money phone' evidence presented by the police. The lack of independent, expert analysis meant the evidence lacked the balance necessary for a fair trial and that the jury was not equipped to critically evaluate the gang narrative.

Independent and Qualified Experts on Gang Evidence

3.2 In the absence of independent expert evidence, the prosecution's portrayal of rivalry between groups, which risked drawing on racial stereotypes, went unchallenged in this case. Such assertions of gang membership or affiliation are linked to the racial biases set out at paragraphs 2.1-2.14 above, that can compromise trial fairness, often subconsciously relied upon by the prosecution.

3.3 As occurred in the Appellant's case, the defence did not get the opportunity to properly cross-examine the police on the weakness of the gang evidence because it is understood that certain facts were agreed by advocates and other topics were not welcomed for discussion, allowing for errors to remain uncorrected. Where non-expert led

²⁶ It has transpired through fresh evidence that this was the case as the young boy actually pictured stated that his: "face wasn't hidden for any reason in particular, but because we were messing around" (CACD1-2313).

prosecution evidence is not counterbalanced by expert evidence tendered by the defence, the effect of racialised stereotypes can remain in the minds of the jurors.

- 3.4 Research shows gang evidence and joint enterprise disproportionately affect young Black defendants. The Tackling Racial Injustice JUSTICE Report highlighted the need for independent experts to prevent harmful stereotypes and ensure fair trials.²⁷ JUSTICE argues that "*the use of police officers as experts amounts to no more than the prosecution calling itself to give evidence.*"²⁸ Independent experts, in contrast, offer objective assessments and prevent inappropriate opinion evidence.
- 3.5 Moreover, studies show that a 'gang narrative' can prejudice jurors and strengthen weak evidence, with jurors more likely to convict when a defendant is labelled as a gang member, even with identical evidence, often disregarding reasonable doubt. The Eisen, Dotson, and Dohi study, '*Probative or Prejudicial: Can Gang Evidence Trump Reasonable Doubt?*' found that jurors are more likely to convict when a defendant is labelled as a gang member, even with identical evidence, often convicting based on the gang label alone.²⁹
- 3.6 In this appeal, JUSTICE notes that the 'money phone' gesture and blue bandana were labelled as 'gang signs' (and specifically linked to the Appellant's purported membership or affiliation with the M40 gang) without proper scrutiny, compounded by unsubstantiated drug dealing allegations. Research highlights the weaknesses of gang evidence, such as gang signs and colours, which are often misinterpreted without expert analysis.
- 3.7 The risks of vague terminology in gang-related cases is also significant:
 - 3.7.1 The line between 'members' and 'affiliates' in gangs is often unclear, leading to potential misclassification and serious legal and social repercussions, especially for young people unfairly targeted due to loose associations.³⁰ The Metropolitan

²⁷ Tackling Racial Injustice JUSTICE Report (n.1), 101

²⁸ Ibid., 41

²⁹ Mitchell Eisen et al., 'Probative or Prejudicial: Can Gang Evidence Trump Reasonable Doubt?' 62 UCLA Law Review 2 <<https://www.uclalawreview.org/pdf/discourse/62-1.pdf>>. See also Mitchell Eisen et al, 'Examining the Prejudicial Effects of Gang Evidence on Jurors' (2013) Journal of Forensic Psychology Practice 1 <<https://doi.org/10.1080/15228932.2012.713831>> ; and Mitchell Eisen, and Brenna Dotson (2014) 'Exploring the Prejudicial Effect of Gang Evidence: Under What Conditions Will Jurors Ignore Reasonable Doubt' (2015) 2(1) Criminal Law Practitioner, Article 5 <<https://digitalcommons.wcl.american.edu/clp/vol2/iss1/5>>

³⁰ Tackling Racial Injustice JUSTICE Report (n.1), 32-33.

Police Service acknowledged this issue by scrapping the gangs violence matrix (GVM) in October 2022,³¹ following criticism, including StopWatch's report on the negative impact of being labelled a 'gang nominal'.³² Amnesty International's report, *'Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs database'* also identified human rights and data protection issues with the matrix,³³ noting its 78% composition of Black males, a proportion highlighted by the Mayor's Office for Policing and Crime (MOPAC) to be "*disproportionate to their likelihood of criminality and victimisation*".³⁴

3.7.2 As occurred in this case, the terms 'gang' and 'group' have come to be used interchangeably, causing confusion and potential misjudgement. The 2017 Lammy Review noted 'covert' prejudice in gang affiliation evidence, where 'gang' can imply ethnicity rather than actual links between suspects, affecting public discourse and judicial outcomes.³⁵

Police Evidence and the Requirements for Qualified Expert Evidence

3.8 In criminal proceedings, relying on qualified experts rather than police officers with local knowledge is crucial. The officer in the case ("**OIC**") may lack objectivity due to confirmation bias, interpreting evidence to fit pre-existing beliefs, as noted in the College of Policing's own guidance.³⁶ This bias can skew evidence presentation and influence legal outcomes.³⁷

3.9 Studies show that an OIC's close involvement can impair impartiality. Police officers may carry unconscious biases, and juries may defer to them, effectively allowing the

³¹ Metropolitan Police, 'Gangs violence matrix' (2022) <<https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/gangs-violence-matrix/>>

³² Dr Patrick Williams, 'Being Matrixed: The (Over) Policing of Gang Suspects in London' (StopWatch, August 2018) <<https://e-space.mmu.ac.uk/621731/1/Being%20Matrixed.pdf>>

³³ Amnesty International, 'Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs database' (2018) <<https://www.amnesty.org.uk/files/reports/Inside%20the%20matrix.pdf>>

³⁴ MOPAC, 'Review of the MPS Gangs Matrix by MOPAC' <<https://www.met.police.uk/foi-ai/metropolitan-police/d/october-2022/review-mps-gangs-matrix-mopac>>

³⁵ The Lammy Review (n.3), 69

³⁶ College of Policing, 'Making good decisions: ensuring impartiality and recording investigative decisions' (28 August 2023) <<https://www.college.police.uk/guidance/conducting-effective-investigations/making-good-decisions>>

³⁷ Saul Kassin, Itiel Dror and Jeff Kukucka, 'The forensic confirmation bias: Problems, perspectives, and proposed solutions' (2013) 2 Journal of Applied Research in Memory and Cognition 45 <<https://www.sciencedirect.com/science/article/abs/pii/S2211368113000028>>

prosecution to present its own evidence.³⁸ Suitably qualified independent experts should offer a more balanced analysis, countering myths and stereotypes.

3.10 The qualifications of police 'experts' have been challenged. According to *Myers* a police officer providing expert evidence must: (a) demonstrate their qualifications through training/experience, (b) explain their conclusions and sources, (c) specify the origin of primary conclusions, and (d) have a balanced body of specialised knowledge. Courts have echoed these requirements including:

3.10.1 *R v Dixon Kenton* [2021] EWCA Crim 673: "*It does not follow from PC Barr's undoubted expertise in Lambeth gangs that he was entitled to assert, without more, that X or Y was a member of a particular (or any) gang. That opinion would have to be based on admissible evidence which could be tested in the usual way and which also satisfied the requirements of the CJA.*"

3.10.2 *R v Abdi* [2022] EWCA Crim 315: "*Insofar as the individual defendants were concerned, PS Ashton was not permitted to give evidence of gang affiliation based on hearsay material. Rather, proof of their association with a gang required direct admissible evidence.*"

3.11 This problem of police 'expert' evidence may be mitigated by making the limits of the evidence clear in directions to the jury. There is a risk that by failing to acknowledge the limits of a particular expert, noting the limitations of evidence provided by police officers recognised in *Dixon Kenton* and *Abdi*, the existence of a 'gang-related' factor may be assumed to be true and the jury may not feel adequately empowered to make that judgement themselves, especially as such evidence has been provided by a seemingly expert/professional individual.

3.12 Although the police can qualify as experts on gang evidence, in this case, particularly regarding the claim that blue was an M40 gang colour, they did not meet the criteria for a qualified gang expert:

3.12.1 Police testimony alone struggles to meet the 'expert' evidence standard, which requires supportive expert evidence that was missing in the present case. Police with extensive experience in gang cases can provide expert gang evidence if

³⁸ Tackling Racial Injustice JUSTICE Report (n.1)

they meet the usual expertise requirements and follow the rules for giving expert evidence.³⁹

3.12.2 The shortcomings of police testimony as expert evidence are well-documented in research like the Tackling Racial Injustice JUSTICE Report and works by Tony Ward and Shahrzad Fouladvand, such as '*Bodies of knowledge and robes of expertise: expert evidence about drugs, gangs and human trafficking*' ("***Bodies of Knowledge***").⁴⁰ It must satisfy the Myers factors, with the police expert having "*made a sufficient study... to assemble what can properly be regarded as a balanced body of specialised knowledge*", which was not present in this case.

Poor Reliability of Identification Made from Images

3.13 The identification of suspects using images alone is further fraught with problems. In their 2023 report, '*The New Reality: Non-Eyewitness Identifications in a Surveillance World*',⁴¹ and the 2024 follow-up, '*The Witness Who Was Not There: Challenging the Reliability of Identifications Made from Images*',⁴² Tamar Lerer and Kathy Pezdek critique the reliability of identifications made from video footage. They argue these non-eyewitness identifications are error-prone, similar to eyewitness identifications, due to factors like image quality, familiarity, time delay, and cross-race effects (see paragraphs 3.14 to 3.15, immediately below). Cognitive biases, such as 'priming', can also influence memory and perception, affecting identification accuracy. This is where exposure to certain cues or information influences an individual's memory and perception, potentially affecting their identification accuracy by predisposing them to recognise or recall specific details.

3.14 Jungwon Lee and Steven D. Penrod's study, '*Three-level meta analysis of the other-race bias in facial identification*', analysed 159 articles from 1969 to 2021, revealing a

³⁹ Archbold: *Criminal Pleading, Evidence and Practice 2025* (Sweet & Maxwell, October 2024), sections 10-19 to 10-26.

⁴⁰ Tony Ward and Shahrzad Fouladvand, 'Bodies of knowledge and robes of expertise: expert evidence about drugs, gangs and human trafficking' (2023, University of Sussex Journal Contribution) <https://sussex.figshare.com/articles/journal_contribution/Bodies_of_knowledge_and_robes_of_expertise_expert_evidence_about_drugs_gangs_and_human_trafficking/23480810?file=41189795>

⁴¹ Kathy Pezdek, 'The New Reality: Non-Eyewitness Identifications in a Surveillance World' (2023) 32(6) *Current Directions in Psychological Science* 439-445 <<https://journals.sagepub.com/doi/10.1177/09637214231182582>>

⁴² Tamar Lerer and Kathy Pezdek, 'The Witness Who Was Not There: Challenging the Reliability of Identifications Made from Images' (National Association of Criminal Defense Lawyers, May 2024) <<https://www.nacdl.org/Article/May2024-TheWitnessWhoWasNotThereChallengingtheReli>>

moderate effect size for other-race bias (also known as own-race bias ("ORB")).⁴³ It shows people recognise faces of their own race more accurately than those of other races, with white participants exhibiting a larger bias. The study explored socio-cognitive and perceptual expertise explanations, highlighting the persistent nature of this bias in facial recognition evidence, a fact underscored in Meissner & Brigham's study, '*Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta Analytic Review*', which analysed data from 39 studies with nearly 5,000 participants and confirmed significant ORB in the identification evidence studied.⁴⁴

- 3.15 The inherent problems with identification evidence made from images are compounded by the erroneous belief that police officers provide more reliable eyewitness testimony than civilians. As Vredeveldt and Van Koppen identify in their study, '*The Thin Blue Line-Up: Comparing Eyewitness Performance by Police and Civilians*', while police may report more accurate crime-relevant details, they are no better than civilians at identifying perpetrators in line-ups, for example, and may even be more prone to false identifications.⁴⁵

Lack of Expert Evidence in the Appellant's Case

- 3.16 JUSTICE submits the following in the Appellant's case:

3.16.1 DC Connor failed to provide evidence supporting the claim of 'gang colours' and lacked the necessary expertise to provide such a testimony. There was no explanation for associating colours with the alleged M40 and RTD gangs. Identifying gangs by colours is problematic and may inappropriately adultify youth behaviour, especially in Black and ethnic minority defendants. The trial judge referenced the Appellant's blue 'gang colour', a determination that should have been made by the jury, who might have questioned the relevance of colours and the gang narrative.

⁴³ Jungwon Lee and Steven D Penrod, 'Three-level meta-analysis of the other-race bias in facial identification' (2022) 36(5) *Applied Cognitive Psychology* 1106
<<https://onlinelibrary.wiley.com/doi/abs/10.1002/acp.3997>>

⁴⁴ Christian A Meissner and John C Brigham, 'Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review' (2001) 7(1) *Psychology Public Policy and Law* 3
<https://www.researchgate.net/publication/232572386_Thirty_Years_of_Investigating_the_Own-Race_Bias_in_Memory_for_Faces_A_Meta-Analytic_Review>

⁴⁵ Annelies Vredeveldt and Peter van Koppen, 'The Thin Blue Line-Up: Comparing Eyewitness Performance by Police and Civilians' (2016) 5(3) *Journal of Applied Research in Memory and Cognition* 252
<<https://www.sciencedirect.com/science/article/abs/pii/S2211368116300547>>

3.16.2 PC McGregor, the OIC, was not the required independent expert. With the risk of potential cognitive biases in mind, it is notable that he offered no evidence for asserting gang membership or affiliation, or identifying the Appellant via video evidence of a blue bandana. Fresh evidence challenges his expertise in identifying the Appellant or M40 as a 'gang'. Demonstrating gang affiliation is complex and prejudicial, often relying on police experience rather than exact science, as noted by Ward and Fouladvand in '*Bodies of Knowledge*', but this may be damaging as juries may be swayed by such police evidence.

3.16.3 As considered above at 2.13.1, the photograph of the Appellant with a 'money phone' lacked expert support as a 'gang' sign.

3.16.4 The prosecution's reference to drugs in their closing speech was prejudicial.⁴⁶ The jury was told drugs were relevant without evidence or history, and the allegation was not put to the Appellant. If there were a factual basis, independent expert evidence should have been provided on whether the M40 gang was involved with drugs. The unsupported drug reference, alongside the gang evidence, highlights racial bias and stereotyping in prosecutions involving Black defendants.

4. CONCLUSION AND RECOMMENDATIONS

4.1 For all the reasons given above, JUSTICE respectfully invites the Court to pay particular notice to the context around the prejudicial forms of evidence used against the Appellant as well as the lack of independent experts used to analyse such evidence. JUSTICE sees such issues as endemic within the criminal justice system and we invite the Court to establish through this case important principles or guidance in addressing inconsistencies which frequently arise in similar factual scenarios and suggests a series of recommendations which may assist the Court and the wider judiciary:

4.1.1 **Use of independent experts in gang-related cases:** Mandate the use of accredited, independent experts for gang-related evidence to ensure compliance with evidentiary standards. This would ensure that such evidence is reliable, objective, and free from bias, thereby safeguarding against its misuse and enhancing the fairness of trials.

⁴⁶ This was compounded by the judge's direction to the jury that they may think this photo includes cash which "is evidence of drug dealing" (SU17G).

- 4.1.2 **Strict application of the *Myers* test:** Enforce the strict application of the *Myers* test when police officers provide expert evidence, particularly in gang-related cases. This would help prevent bias and stereotyping, ensuring that evidence presented is credible and appropriately scrutinised.
- 4.1.3 **Enhanced Jury Directions:** Mandate specific jury instructions that address the potential prejudicial impact of gang-related evidence and emphasise the importance of evaluating such material critically.
- 4.1.4 **Guidelines for the use of cultural evidence:** Develop guidelines for the admissibility and interpretation of cultural evidence, such as drill music, in criminal trials. These guidelines should aim to prevent cultural expressions from being mischaracterised as indicators of criminal behaviour, thereby reducing the risk of racial stereotyping.
- 4.1.5 **Procedural Safeguards Against Stereotyping:** Implement safeguards to ensure freedom of association is not unfairly interpreted as evidence of criminal intent, particularly for young defendants from ethnic minority backgrounds.

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13 December 2024